



**The Comptroller General
of the United States**

Washington, D.C. 20548

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Decision

Matter of: S.T. Research Corporation

File: B-233115.2

Date: March 30, 1989

DIGEST

Agency is not required to exclude a firm from a procurement in order to eliminate a competitive advantage because of an organizational conflict of interest where the firm did not prepare the work statement, more than one contractor provided material leading to the work statement, and there is no evidence of preferential treatment by the government.

DECISION

S.T. Research Corporation protests the award of a contract to ARGOSystems, Inc., under request for proposals (RFP) No. N00024-88-R-5512(Q), issued by the Naval Sea Systems Command (NAVSEA) for the development, fabrication, integration, testing, installation, demonstration, and documentation of a field change evaluation kit for the AN/WLR-1H(V)3 radar system. S.T. Research argues that as a result of a previous ARGOSystems contract for technical support involving an electromagnetic interference evaluation of the AN/WLR-1H(V)3 radar system, ARGOSystems had an organizational conflict of interest and an unfair competitive advantage with regard to the procurement of the field change kit.

We deny the protest.

The Navy restricted the RFP for the field change kit, issued on April 27, 1988, to two offerors, ARGOSystems and S.T. Research. The RFP called for proposals to provide production improvements to an electronic countermeasure device which provides long range area surveillance of hostile targeting emitters, enabling shipboard weapons to be engaged before hostile targeting radar is able to detect the

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presence of a Navy ship. Offerors were to develop, test, and install an evaluation change package which will incorporate various subsystems, tolerances, interfaces, tests and standards.

The AN/WLR-1H(V)3 system is a variant of the AN/WLR-1H group of electronic support measures systems used on surface ships. The AN/WLR-1H(V)3 system is composed of three major subsystems: (1) the signal acquisition subsystem, originally developed by S.T. Research, which provides for radio signal interception over independently controlled tuner bands; (2) the data management subsystem, originally developed by ARGOSystems, which accepts, stores, processes and updates files on the signals and provides measurements to the control and data deployments of the signal acquisition subsystem; and (3) the built-in test equipment, developed by a third firm, which automatically self-tests the system. ARGOSystems also integrated the different subsystems into one system.

The first AN/WLR-1H(V)3 system was installed on the aircraft carrier USS Saratoga in September 1986. The Navy conducted extensive developmental tests on the system, as well as an electromagnetic interference evaluation, from September through December 1986 which resulted in a classified report documenting deficiencies and recommending solutions to the operational problems with respect to how emissions from the ship's electronic equipment interfered with its other equipment.

In connection with the developmental testing, the Naval Electronics Systems Engineering Center (NAVLEXCEN), Portsmouth, issued a sole-source purchase order to ARGOSystems to provide technical support services to Navy engineers and participate in evaluating a problem the Navy had encountered with electromagnetic interference and blanking (prevention of interception of radio signals generated by a ship's own radar emitters) of the AN/WLR-1H(V)3 system. The Navy states that it chose ARGOSystems because the firm was uniquely qualified to provide the engineering services due to its experience as the system's integrator. The evaluation was conducted aboard the USS Saratoga December 6 through 12, 1986, and resulted in ARGOSystems' submitting a trip report to NAVLEXCEN on December 18 that made general suggestions on electromagnetic interference and blanking, and hardware and software improvements for the radar system. S.T. Research received a copy of the ARGOSystems trip report on November 30, 1988, as part of the documentation provided by the Navy in connection with another protest S.T. Research had filed in our Office.

S.T. Research filed its current protest on December 14, 1988, asserting that the ARGOSystems trip report is so similar to the language and requirements of the statement of work (SOW) for the field change kit that ARGOSystems must have had substantial involvement in drafting the SOW, resulting in an organizational conflict of interest which required the Navy to exclude ARGOSystems from the competition for the field change kit. The protester also argues that ARGOSystems prior participation in development of the system gave rise to an unfair competitive advantage for ARGOSystems in connection with the field change kit procurement which the Navy failed to eliminate.

The Navy responds that S.T. Research's protest is untimely since S.T. Research was aware of the basis for its protest on October 13, 1988, when the firm raised the issue of ARGOSystems' alleged unfair competitive advantage in a letter to Senator John Warner, and that, in any case, the field change kit SOW was developed by NAVSEA from engineering change proposals (ECPs) generated by both ARGOSystems and S.T. Research, and from the Navy's own shipboard evaluations. The Navy further asserts in an affidavit from the contracting officer that NAVSEA had not seen the ARGOSystems trip report which was prepared for NAVLEXCEN when NAVSEA wrote the SOW for the field change kit. Moreover, the Navy maintains that the similarity in language between the two documents is a result of the need to describe a limited number of operational characteristics of the system, the use of common engineering terms of art, and the fact that many suggestions contained in the ARGOSystems trip report came from observations and recommendations of Navy personnel on the USS Saratoga.

First, we do not agree with the Navy's assertion that S.T. Research's protest is untimely. Although S.T. Research did allege that ARGOSystems had an unfair competitive advantage in its October 13, 1988 letter to Senator Warner, the document referred to as support for the allegation is an August 1987 RFP circulated by ARGOSystems, not the ARGOSystems trip report on which the current protest is based. Until S.T. Research received a copy of the trip report on November 30, 1988, the firm was not aware of the basis of its protest concerning the similarity of that document to the field change kit SOW and ARGOSystems' alleged organizational conflict of interest and unfair competitive advantage.

With respect to those allegations, the Federal Acquisition Regulation (FAR) generally requires contracting officials to avoid, neutralize or mitigate potential significant conflicts of interest so as to prevent an unfair competitive

advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR §§ 9.501, 9.504, and 9.505; ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450. In particular, the FAR provides that if a contractor: (1) prepares or assists in preparing a work statement to be used in competitively acquiring a system or services, or (2) provides material leading directly, predictably, and without delay to such a work statement, then the contractor generally may not supply the system or services unless more than one contractor has been involved in preparing the work statement. FAR § 9.505-2(b)(1). This restriction is intended to avoid the possibility of bias where a contractor would be in a position to favor its own capabilities. Coopers & Lybrand, 66 Comp. Gen. 216 (1987), 87-1 CPD ¶ 100.

Furthermore, the mere fact of a prior or current contractual relationship between the government and a firm does not in itself create an organizational conflict of interest for that firm. Associated Chemical and Environmental Services, et al., B-228411.3 et al., Mar. 10, 1988, 67 Comp. Gen. ____, 88-1 CPD ¶ 248. A particular offeror may possess unique advantages and capabilities due to its prior experience under a government contract and the government is not required to attempt to equalize competition to compensate for it, unless there is evidence of preferential treatment or other improper action. S.T. Research Corp., B-233309, Mar. 2, 1989, 89-1 CPD ¶ ____.

We do not find that the Navy acted improperly in including ARGOSystems in the competition for the field change kit. First, the Navy drafter of the field change kit SOW has furnished a sworn affidavit that ARGOSystems did not participate in the development or drafting of the SOW and that he was not aware of the existence of the ARGOSystems trip report until after the SOW was finalized. Further, we find the Navy's explanation of the similarity between the trip report and the language in the field change kit SOW to be reasonable. Although many items in the trip report are similar to the changes defined in the field change kit, the author of the trip report specifically acknowledges that his suggestions were the result of observations of the system by himself and three Navy personnel, as well as of conversations with Navy operators aboard the USS Saratoga. Moreover, the Navy's own report on the USS Saratoga testing and a Navy report from the USS Iowa contained many of the same recommendations as those in the trip report.

Even if the Navy drafter of the SOW had been aware of the trip report, it is clear that ARGOSystems' involvement in the 1986 testing which resulted in the trip report dealt with identifying problems with the system and proposing

general improvements rather than suggesting specific, detailed modifications and delineating the manner in which these modifications should be implemented. Therefore, performing the trip report evaluation would not have put ARGOSystems in a position of favoring its own capabilities in the field change kit SOW. Accordingly, the Navy was not required to compensate for any advantage ARGOSystems may have had as a result of its previous contract for technical services concerning the system. Information Ventures, Inc., et al., B-219989; B-219989.2, Dec. 16, 1985, 85-2 CPD ¶ 668.

Moreover, of the 37 changes to the system contained in the field change kit SOW, S.T. Research itself contributed 11, either through ECPs for this field change kit, or through ECPs developed as a subcontractor to ARGOSystems on the field change kit for the AN/WLR-1H(V)1 system, a variant of the AN/WLR-1H(V)3 system used aboard submarines that includes many similar components. The Navy acknowledges that ARGOSystems contributed five ECPs developed for, but not approved by, the Navy, under ARGOSystems' original production/integration contract for upgrading the AN/WLR-1H(V)3 system that resulted in six items of the SOW for the field change kit at issue here.^{1/} The remaining changes to the system listed in the SOW for the field change kit appear to have developed from the results of the Navy's shipboard evaluation of the system on the USS Saratoga (which included the ARGOSystems trip report), experience with the system on the USS Iowa, and other observations and suggestions from the systems' Navy operators aboard the ships.

Accordingly, even though some of the field change kit SOW's changes to the radar system appeared in the ARGOSystems trip report, since (1) more than one contractor contributed to the SOW through ECPs; (2) the Navy has provided an affidavit stating that ARGOSystems had no role in preparing the SOW; (3) recommendations contained in the trip report were not specifically prepared to be included in the field change kit SOW and were not as detailed with regard to

^{1/} In support of its contention that the Navy gave preferential treatment to ARGOSystems, the protester maintains that these five ECPs in fact were generated by the Navy, which then furnished them exclusively to ARGOSystems. However, the record does not support the protester's claim that the Navy rather than ARGOSystems developed the ECPs.

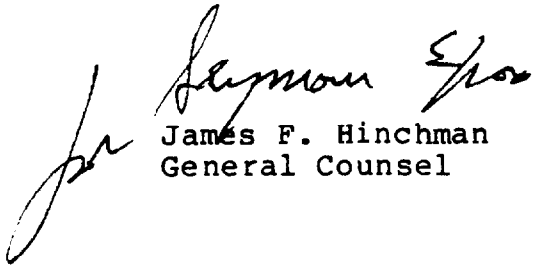
problems to be addressed or desired solutions; (4) not all ARGOSystems' recommendations to improve the system were incorporated into the SOW; and (5) the SOW contained many changes not addressed in the ARGOSystems trip report, we cannot conclude that ARGOSystems had such a direct, determinative influence in shaping the field change kit SOW as to give rise to an organizational conflict of interest. In addition, we see no basis to conclude that the Navy demonstrated a preference for ARGOSystems or acted unfairly so as to favor that firm, such that the Navy was required to exclude ARGOSystems from the competition for the field change kit, or to equalize any competitive advantage that ARGOSystems may enjoy as a result of its experience under a prior government contract. Associated Chemical and Environmental Services, et al., supra.

Finally, in its comments on the agency report on the protest, S.T. Research for the first time attempts to support its challenge to ARGOSystems' participation in the procurement by reference to two factors in addition to the 1986 trip report: (1) the August 1987 RFP generated by ARGOSystems and circulated to S.T. Research as a potential subcontractor to ARGOSystems; and (2) the incorporation in the field change kit SOW of a single package antenna requirement similar to an antenna previously purchased from ARGOSystems on a sole-source basis. Both contentions are untimely raised.

With regard to the 1987 ARGOSystems RFP, the Navy states that because it originally had planned to procure the field change kit on a sole-source basis from ARGOSystems, it had drafted a sole-source SOW and provided it to both ARGOSystems and S.T. Research in May 1987. ARGOSystems then devised its own RFP based on the Navy's SOW and provided it to S.T. Research as a potential subcontractor. Based on S.T. Research's response, the Navy ultimately decided not to procure the field change kit on a sole-source basis from ARGOSystems and instead to conduct the current procurement. The protester thus was aware of the Navy's original sole-source SOW and ARGOSystems' own RFP in 1987, and to the extent the protester now asserts that any similarity between the ARGOSystems RFP and the current SOW demonstrates an organizational conflict of interest or unfair competitive advantage on the part of ARGOSystems, it is clear that the protester was on notice of this basis for protest as of April 27, 1988, when the current solicitation was issued. Since the issue was not raised until S.T. Research's comments filed on February 9, 1989, the issue clearly is untimely. See 4 C.F.R. § 21.2(a)(2) (1988).

With regard to the single package antenna requirement,
S.T. Research's contention was the subject of another recent
protest to our Office which we dismissed as untimely.
S.T. Research Corp., B-233115.3, Feb. 17, 1989, 89-1 CPD
1 ____.

The protest is denied.

James F. Hinchman
General Counsel